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BILL NO. R-96-02- 01

RESOLUTION NO. R- 10-96

RESOLUTION APPROVING THE EXECUTION
OF A LEASE AGREEMENT BETWEEN THE
CITY OF FORT WAYNE AND ALLEN
COUNTY INDIANA TO FORMALIZE
AGREEMENTS CONCERNING JOINT
OCCUPANCY OF THE CITY-COUNTY
BUILDING.

WHEREAS, the City of Fort Wayne has been a tenant in a building owned by the County of Allen, in a structure located in the City of Fort Wayne, known as the City-County Building since its construction; and

WHEREAS, the original Lease Agreement between the parties is out-dated and contains many ambiguities which have arisen during the period of occupancy; and

WHEREAS, it has been determined that a new lease is the best vehicle to spell out the relationship and duties of the parties hereunder; and

WHEREAS, the provisions of I.C. 36-1-11-8 provide the transfers of property between governmental entities may be approved and evidenced by the adoption of substantially identical resolutions by each entity; and

WHEREAS, the attached lease represents a transfer of an interest in real property from Allen County to the City of Fort Wayne.

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON
COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

SECTION 1. The Common Council finds, determines, ratifies and confirms that the attached Lease Agreement between Allen County and the City of Fort Wayne for the City's continued occupancy of the City-County Building is in the best interest of the City of Fort Wayne and its taxpayers.

SECTION 2. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver in the name of and on behalf of the City, the aforesaid Lease Agreement in substantially the form submitted to this Common Council which is hereby approved in all respects.

SECTION 3. The Mayor and the City Clerk are, and each of them is, hereby authorized and directed in the name of and on behalf of the City, to execute any and all agreements, documents and instruments; perform any and all acts approved, any and all matters and do any and all things deemed by them or either of them necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this resolution and the lease agreement hereinabove approved. Forms of the Lease Agreement are before this meeting and are by this reference, incorporated in this resolution.

1 **SECTION 4.** That this Resolution shall remain in full force
2 and effect from and after its passage and any and all necessary approval
3 by the Mayor.
4

5 
6 Council Member
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8 APPROVED AS TO FORM
9 AND LEGALITY
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11 J. Timothy McCaulay
12 J. Timothy McCaulay, Corporation Counsel
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To: Members of City Council
From: Kathy Friend, City Controller kf
Date: February 13, 1996
RE: City-County Building Lease

Attached is a resolution and lease agreement for the City to lease 89,043 square feet for office space and 27,930 square feet of common area in the City- County Building. The rate is \$8.47 per square foot, for a total annual lease payment of \$990,757.

The City and County entered into a joint agreement with Coopers & Lybrand to conduct a cost review of maintaining the City-County Building in order to determine the square footage cost. The study considered maintenance, direct salaries and benefits, insurance, cost allocations from County administrative offices, amortization of capital attributable to the building less any rental income received.

It should be noted that the City area of the building has been reduced from 121,701 to 116,973. A net decrease of space of 4,728 square feet, which is equivalent to \$40,046 annually. This is primarily because Police Department space in the basement was returned to the County. The City did acquire 575 additional square feet for City Council office space, which will be completed by July 1996.

Following are the rent payments made to the County the last three years and the proposed 1996 rate:

	<u>City Utilities</u>	<u>Civil City</u>
1993	137,095	715,848
1994	137,095	858,901 (included settlement of 1992 rent)
1995	139,836	734,144
1996 Budget	144,000	787,500
1996 Estimated	158,521	832,236

The Civil City budget will require an additional appropriation from unobligated balance of \$44,736 to make the 1996 lease payments. This appropriation request will be part of the first quarter budget adjustments introduced in March.

Read the first time in full and on motion by Henry,
and duly adopted, read the second time by title and referred to the
committee on Finance (and the City Plan Commission
or recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Council Conference Room 128, City-County Building, Fort
Wayne, Indiana, on _____, the _____ day of _____
M., E.S.T.

DATED: 2-13-96

SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Henry,
and duly adopted, placed on its passage. PASSED CLOSED
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>			<u>2</u>
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
EDMONDS				<u>1</u>
HALL	<u>✓</u>			
HAYHURST	<u>✓</u>			
HENRY	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT				<u>1</u>

DATED: 2-27-96

SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. R-10-96

on the 27th day of February, 1996

ATTEST:

(SEAL)

SANDRA E. KENNEDY, CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on

the 28th day of February, 1996,

at the hour of 11:00 o'clock M., E.S.T.

SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 4th day of March,
96, at the hour of 2:00 o'clock P.M., E.S.T.

PAUL HEIMKE, MAYOR

LEASE AGREEMENT

WITNESSETH:

In consideration of the mutual covenants herein contained and of other good and valuable consideration the receipt and adequacy of which are hereby acknowledged Lessor and Lessee agree as follows:

1. Premises:

Lessor does hereby grant demise and lease unto Lessee 116,973 square feet of the following described Premises, including the Lessee's allocable share of common area which described Premises Lessor warrants it has a right to so lease: see Exhibit A attached hereto and incorporated herein by reference which incorporates a sketch showing the spaces leased to Lessee.

2. Term:

TO HAVE AND TO HOLD THE SAME, together with all rights, privileges, easements and appurtenances thereto attached and belonging to Lessee, its successors and assigns, for and during a term of five (5) years (hereinafter referred to as the Term) beginning January 1, 1996, and ending on December 31, 2001, unless sooner terminated as provided herein.

a. The term of this agreement is subject to annual appropriations by the Common Council of the City of Fort Wayne and the Allen County Council. This agreement may be terminated by any one upon sixty (60) days notice in the event funds for the payment of obligations hereunder are not appropriated as part of the annual budget adopted by the Common Council of the C1ty of Fort Wayne or the Allen County Council.

3. Rent:

Lessee shall pay to Lessor Eight Dollars (\$8.47) per square foot of space occupied per year, payable quarterly in advance, commencing January 1, 1996.

a. Determination of Space Occupied. On or before June 1 of each year, Lessor shall provide Lessee with a building occupancy schedule defining what office spaces in the City-County Building are occupied exclusively by Lessee and indicating on said schedule the percentage of total office space exclusively occupied by the Lessor. Said schedule shall be deemed accepted by the City unless notice of objection is provided to the County within ten (10) working days of said notice. If an objection is timely received. the same shall be settled by space measurement services from a mutually acceptable commercial realtor. The cost of such services shall be borne equally by the parties.

Office space used jointly by tb parties, including by way of example and not by way of limitation the City Council chambers and the boiler room shall be considered common areas and allocated in accordance with the percentage of exclusive space of each party.

b. Determination of Future Space Occupancy. Annually, by June 15 of each year, Lessee shall furnish Lessor with any proposed reductions or increases in space to be occupied by Lessee effective the ensuing January 1. If the parties mutually agree, the space allocation shall be modified.

c. Additional Rent Each party hereto shall be responsible for its share of the cost of complying with any State, Federal, or local law or ordinance applicable to the structure.

4. Use:

To be used and occupied for City and City agency offices, conference rooms, meeting rooms and auxiliary space.

5. Ordinance- Regulations and Zoning:

Lessee shall not use or occupy or permit the Premises to be used or occupied in any extrahazardous manner not consistent with Lessee's customary and normal business use, or in any unlawful manner or for any illegal purpose or in such manner as to constitute a nuisance. The Lessee shall comply with all requirements of the constituted public authorities and of the board of fire underwriters or fire insurance exchange or other body having similar functions, and of any Liability and Casualty Insurance Company by which the Lessor may be insured and shall hold the Lessor harmless from penalties, fines, costs, or damages which are occasioned by and result solely from Lessee's occupancy. Lessor covenants that the said premises are properly zoned for the use required by Lessee in conducting its business hereinbefore described and that the use will not violate any restrictions of record.

6. Alterations and Trade Fixtures:

During the term hereof the Lessee, at its own expense, may make such alterations, improvements, and additions as may be necessary for the conduct of its business. The Lessee shall save the Lessor harmless on account of any claims of mechanics, materialmen or any liens in connection with any such alterations, additions or improvements, and all alterations, additions and improvements shall, at the expiration of this Lease, remain upon the Premises and become the property of the Lessor. The Lessee may install in the leased premises trade fixtures, including electrical and plumbing connections incidental thereto, and partitions necessary for the conduct of its business and may remove the same at its election provided that

the actual cost of repairing any damage to the leased premises arising from such removal and in restoring the same to their original condition shall be paid for by the Lessee.

7. Repairs and Maintenance:

Except as otherwise provided, Lessor shall be responsible for all maintenance of the interior and exterior of the premises including but not limited to building structure and landscaping.

8. Inspection.

Lessee agrees to permit Lessor or Lessor's agents to inspect or examine the leased premises at any reasonable times during business hours, and to permit Lessor to make such repairs to the leased building, which Lessor may deem desirable or necessary for its safety or preservation, and which Lessee has not covenanted herein to do or has failed so to do.

9. Lessee's Liability:

Subject to Paragraph 10 hereof, Lessee agrees to be responsible for and to relieve the Lessor from all liability by reason of any damage or injury to any person or property which may arise from or be due to the conduct of Lessee's business on the premises.

10. Lessor's Liability.

Nothing in this Lease shall be construed to relieve the Lessor from liability to Lessee, its agents, employees, invitees, guests and independent contractors for Lessor's own negligence or the negligence of Lessor's servants, employees or representatives, including but not limited to, independent contractors performing work in or about the leased premises.

11. Damage to premises:

The Lessee, at Lessee's expense, either shall carry fire insurance with extended coverage on the leased premises and on Lessee's equipment therein both at replacement value subject to a mortgagee's loss payable clause in favor of any mortgagee or provide a certificate of self insurance. The policy or certificate shall name both the Lessor and the Lessee as co-payees and shall contain a waiver of defense based on co-insurer. Lessee and the Lessor each agree that neither shall be liable to the other for damages caused by fire or explosion to the extent that such damage is compensated for by insurance, and such causes of action as may hereafter accrue to either or them against the other are hereby waived to the extent either party may actually be compensated for such damage by his or its insurance company.

In the event that the demised premises shall be partially damaged by fire or other cause, the damage shall be repaired by and at the expense of the Lessor as soon as practicable after such damage, and the rent until such repairs shall be made, shall be apportioned according the part of the demised premises which is useable by the Lessee. All insurance proceeds attributable to damage to the building shall constitute a fund for the replacement or repair of the premises.

Restoration shall be commenced within thirty (30) days after the damage and in the event it is not completed within six (6) months after said damage, the Lessee shall have the option to terminate this Lease upon fifteen (15) days' written notice to the Lessor, unless said delay is through no fault of the Lessor.

In the event that the building of the demised premises is totally destroyed or damaged by fire or other cause so that the same cannot be restored or rebuilt within six (6) months from the date of such destruction (and if this be so, Lessor shall notify

Lessee within thirty (30) days after the damage), then either party shall have the option to terminate this Lease as of the date of such destruction upon fifteen (15) days written notice, and the rent shall be paid up to the time of such destruction or apportioned and refunded as the case may be. Upon the exercise of such option by either party to terminate this Lease, the same shall cease and determine as of the date of such destruction. In the event the parties terminate the Lease, Lessor shall retain all insurance proceeds attributable to damage to the building.

Each party agrees that the other party may provide a plan of self-insurance as opposed to actual fire insurance for its obligations under this paragraph.

12. Liability Insurance:

Lessee at its expense may provide and keep in force for the benefit of Lessor with insurers licensed to do business in the state wherein the demised premises are situated comprehensive general liability insurance insuring the interest of Lessor and Lessee to include bodily and property damage in the amount of Five Hundred Thousand Dollars (\$500,000.00) Single Limit. Such insurance may cover other premises leased or owned by Lessee or a parent subsidiary or affiliate of Lessee and may contain reasonable deductible clauses. Lessee may elect to provide self-insurance in lieu of an insurance policy. In any case Lessee's exposure shall be limited to the amounts hereinabove specified

13. Notice:

All notices and demands given or required to be given hereunder shall be in writing and sent by United States Registered Mail postage prepaid, addressed to the Board of County Commissioners, Second floor, City-County Building, One Main Street

Fort Wayne, Indiana 46802; the Board of Public Works, Ninth floor, City-County Building, One Main Street Fort Wayne, Indiana 46802; with copies to the office of the County Attorney and the City Attorney.

14. Quiet Enjoyment

The Lessor agrees that upon compliance with the terms and conditions of this Lease, the Lessee shall and may peaceably and quietly have, hold and enjoy the leased premises for the term of this Lease and any renewal of said term.

15. Surrender:

At the expiration of said term or any renewal thereof Lessee will quit and surrender the premises hereby leased in as good state and condition as reasonable use and wear thereof will permit, damage by the elements, fire and other casualty excepted. Any holding over by the Lessee shall not operate except by written agreement, to extend or renew this Lease and no tenancy of any duration shall be created thereby.

16. Assignment or Subletting:

Lessee may assign this Lease or sublet all or any part of the demised premises only to County or City related agencies including but not limited to City Utilities without consent of Lessor.

17. Binding Effect:

The covenants, conditions and agreements herein contained shall be binding upon, and shall inure to the benefit of the parties hereto and their heirs, executors, administrators, successors and assigns.

18. Lessors Remedies:

In the event that Lessee:

- a. does not pay in full, when due, any and all installments of rent and/or any other charges herein agreed to be paid as rent or
- b. violates or fails to perform or otherwise breaks any covenant or agreement herein contained.

then and in any or either of said events, the Lessor shall have the following rights and remedies:

- (1) to institute a legal action for the recovery of the sum or sums due together with attorney fees and costs of collection;
- (2) to elect, at Lessor's option, to declare the Lease forfeited and ended and to institute legal proceedings to recover the demised premises;
- (3) to pursue such other rights and remedies as are given to Lessor by law and equity.

Lessor agrees, however, that no action as above-mentioned shall be taken by Lessor unless Lessor has first given to Lessee fifteen (15) days' written notice of the default and Lessee has failed to commence to rectify and to correct the default within that period of fifteen (15) days.

19. Renewal and Extension and Cost of Living Adjustment:

Lessee, provided it is not then in default, shall have the option to renew this lease for one additional term of five (5) years. Upon this renewal, the rent hereinabove provided shall be adjusted by a percentage determined by dividing the consumer price index all items North Central United States for urban areas size C as of November 30, 2001, by the same index as of November 30, 1995.

The option to renew shall be exercised by Lessee's providing Lessor with a building occupancy schedule on or before June 1, 2001. Further renewals shall be at the mutual agreement of the parties.

20. Entire Agreement:

This Lease with any exhibits and riders attached hereto contains the entire agreement of the parties and no representations, inducements, promises and agreements, oral or otherwise, not embodied herein, shall be of any force or effect. The marginal headings or notes are inserted for convenience only and are not to be construed as a part of this Lease.

This Lease shall be construed in accordance with the laws of the State of Indiana.

21. Recording of Memorandum:

Parties agree to execute a memorandum of this Lease suitable for recording under the laws of the State of Indiana.

22. Drafting of Agreement

Each party to this agreement acknowledges that it has read this agreement and agrees with its terms as though that party had drafted this agreement itself. The parties agree that although the agreement was, by necessity, printed and assembled by one party, its agents or attorneys, this agreement reflects the terms as agreed to by the parties, and the party that printed and assembled this agreement should merely be considered only the scrivener for the document. In the event a term or terms of this agreement is considered ambiguous, neither party shall be considered the draftsperson for the purpose of causing the terms of this agreement to be construed

against that party.

IN WITNESS WHEREOF, the said Lessee by its corporate officers duly authorized by its respective Board of Directors, have hereunto set their signatures the day and year first above written or the date indicated next to such signature.

ALLEN COUNTY COMMISSIONERS BOARD OF PUBLIC WORKS

Edwin J. Rousseau

Linda Buskirk, Director

Jack C. McComb

Dr. C. James Owen, Member

Linda K. Bloom

Terrance P. McCaffrey, Member

CITY UTILITIES

ATTEST:

Therese M. Brown

Linda Buskirk, Director

Auditor of Allen County

Terrance P. McCaffrey, Member

F:\WP60\CTYCOTY.LSE

Dr. C. James Owen, Member

against that party.

IN WITNESS WHEREOF, the said Lessee by its corporate officers duly authorized by its respective Board of Directors, have hereunto set their signatures the day and year first above written or the date indicated next to such signature.

ALLEN COUNTY COMMISSIONERS BOARD OF PUBLIC WORKS



Edwin J. Rousseau

Linda Buskirk, Director



Jack C. McComb

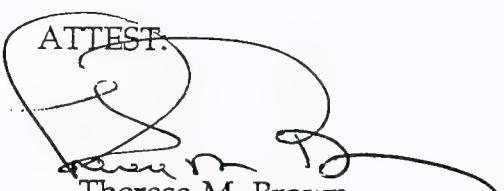

Dr. C. James Owen, Member

Linda K. Bloom


Terrance P. McCaffrey, Member

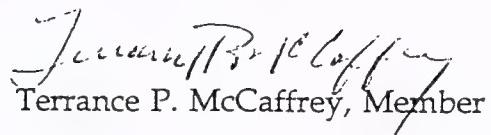
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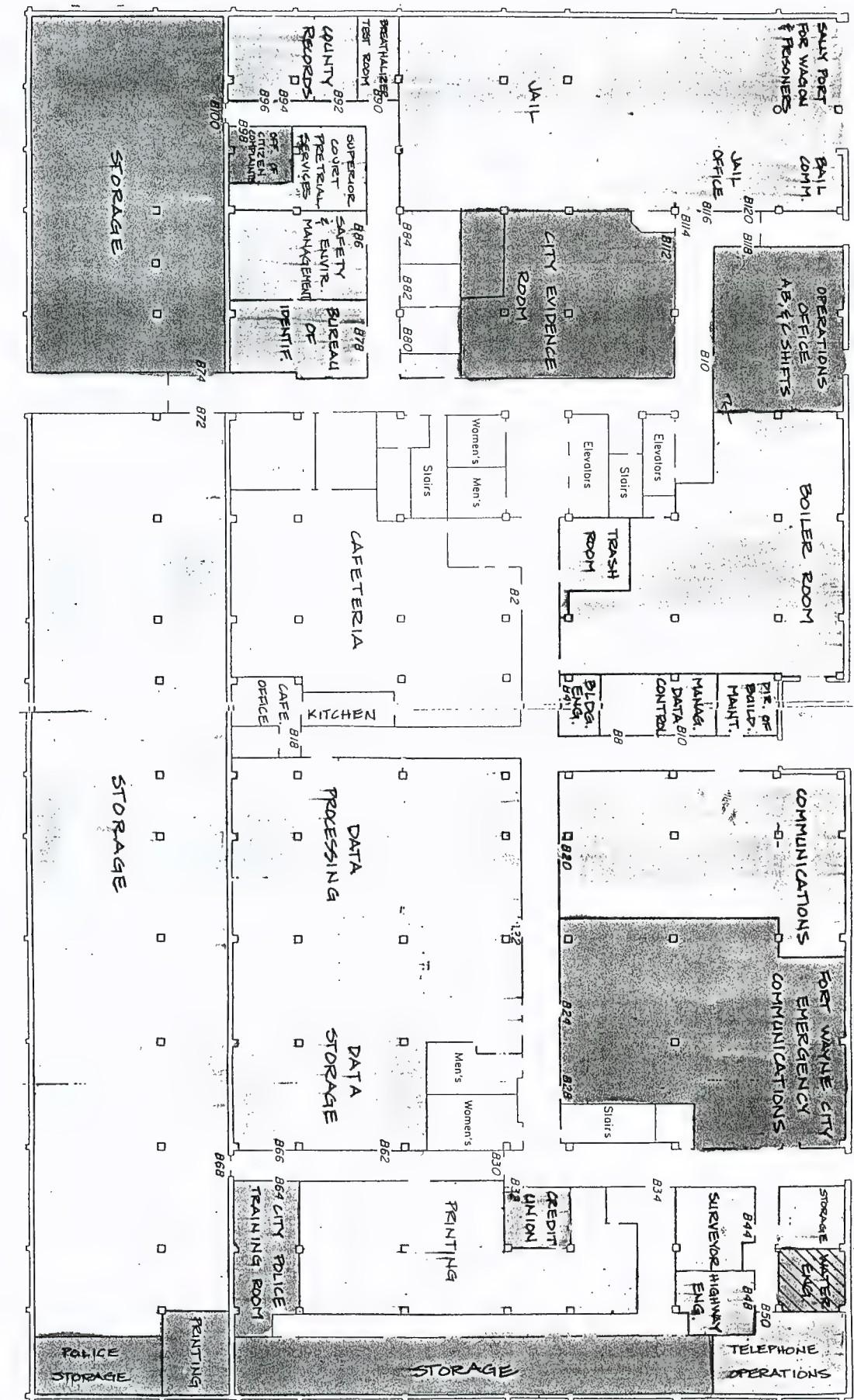
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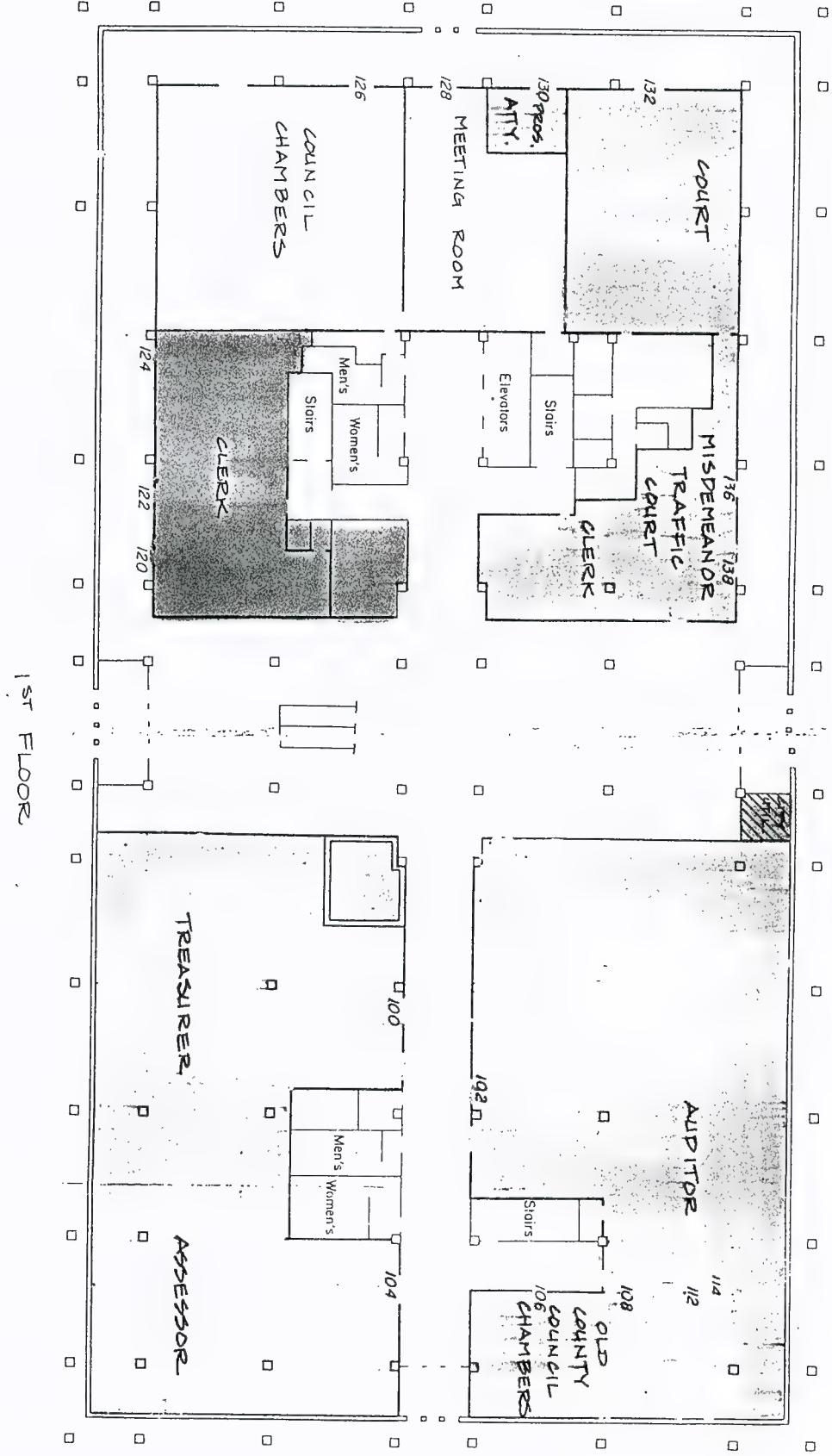

ATTEST.
Therese M. Brown

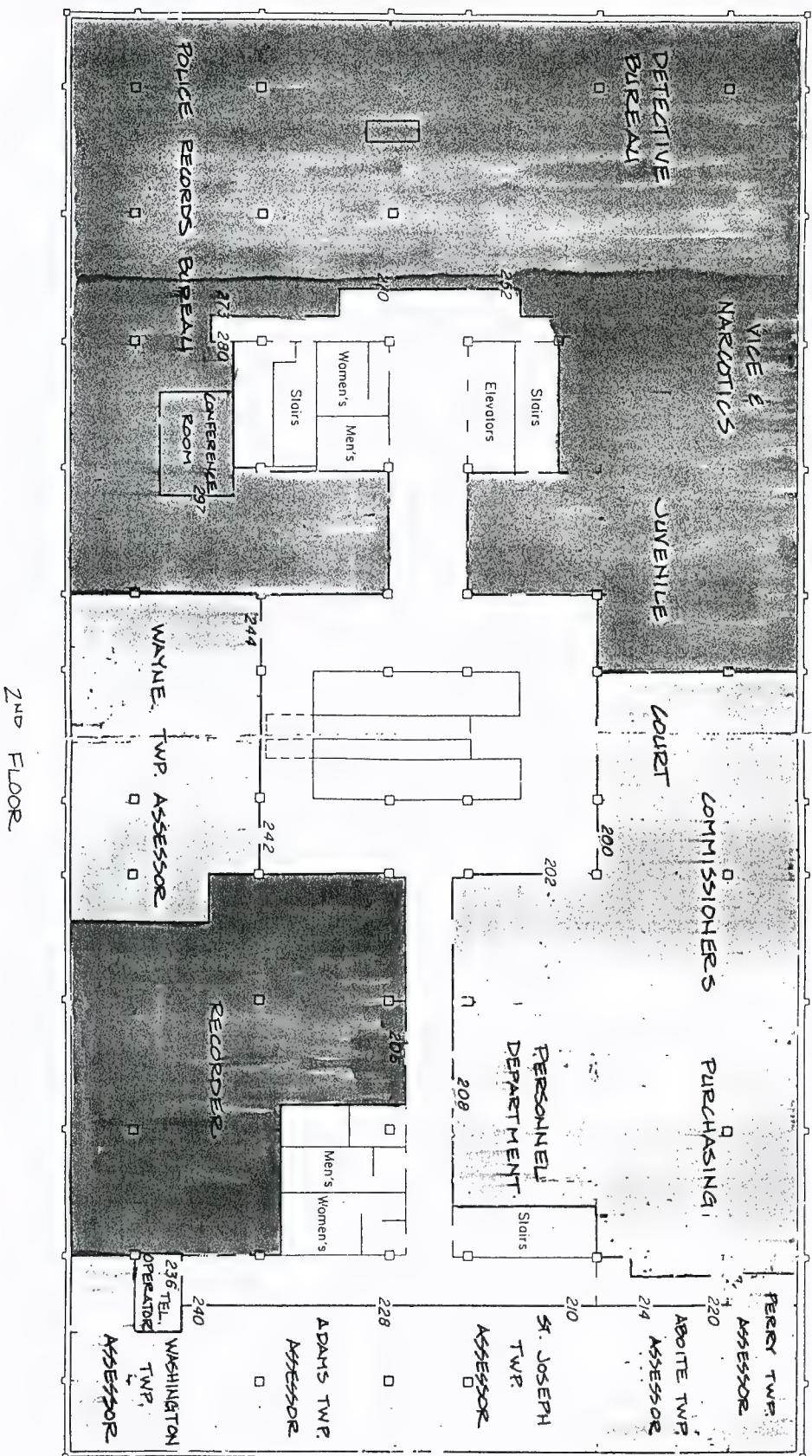
Auditor of Allen County

Linda Buskirk, Director

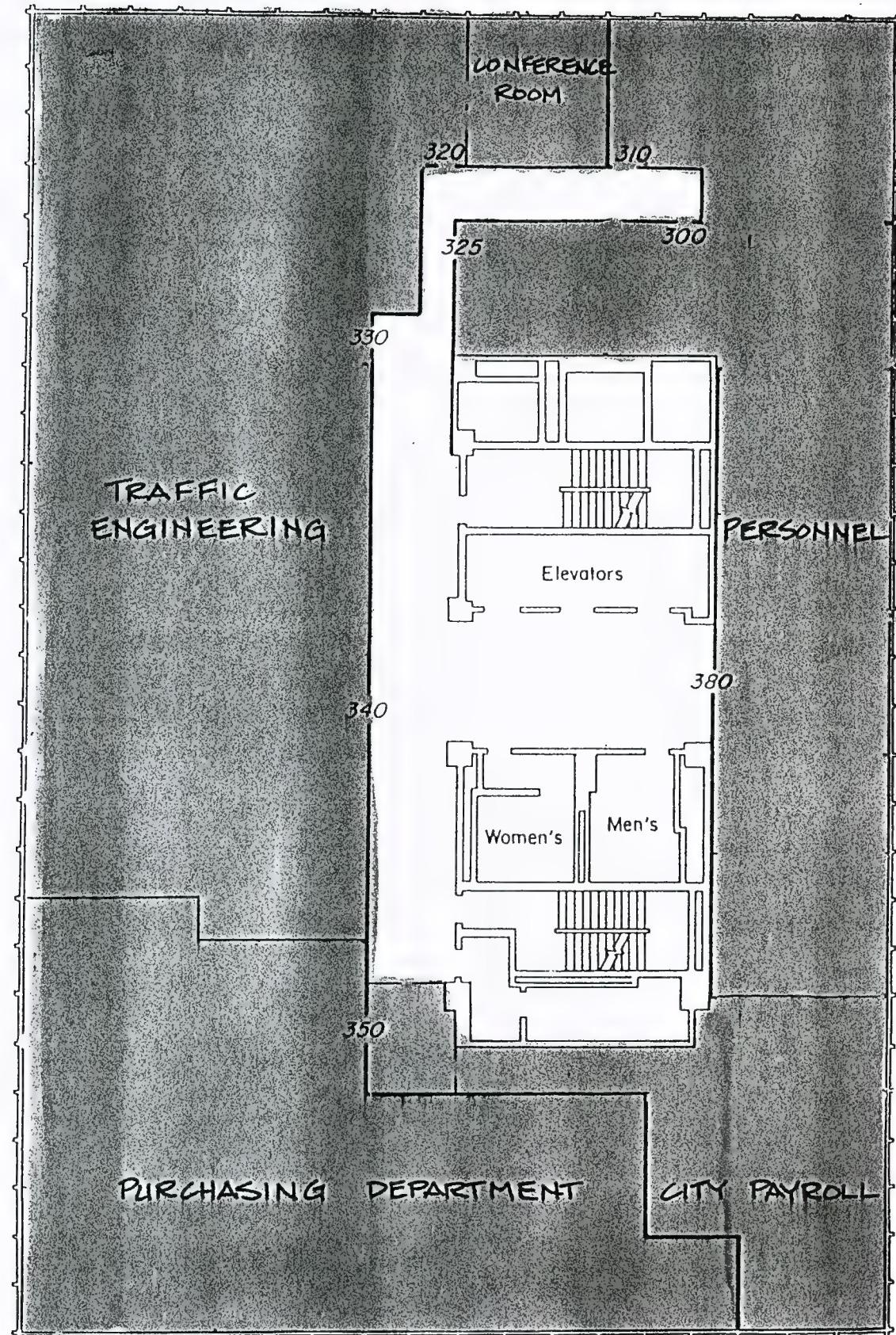

Terrance P. McCaffrey, Member
Dr. C. James Owen, Member



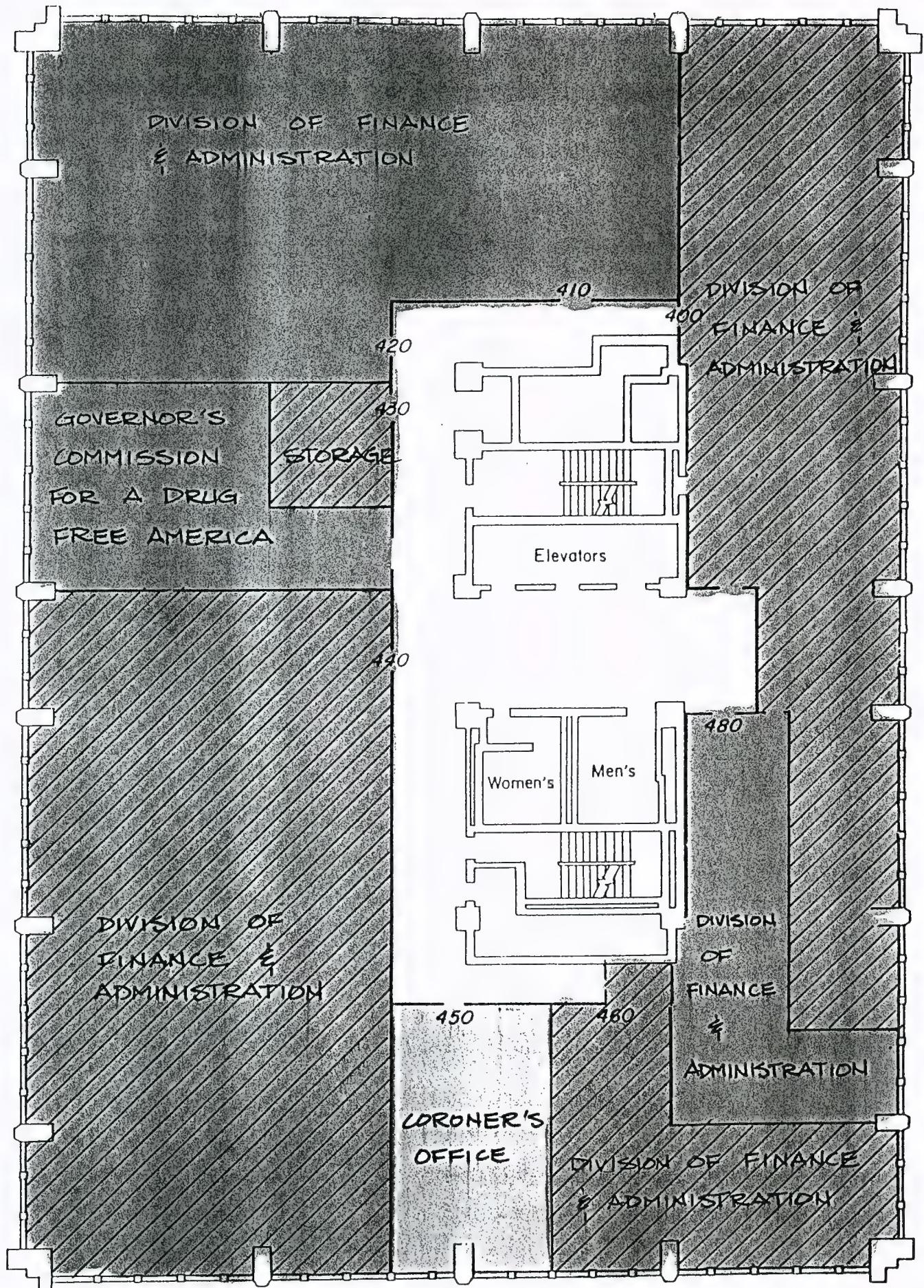




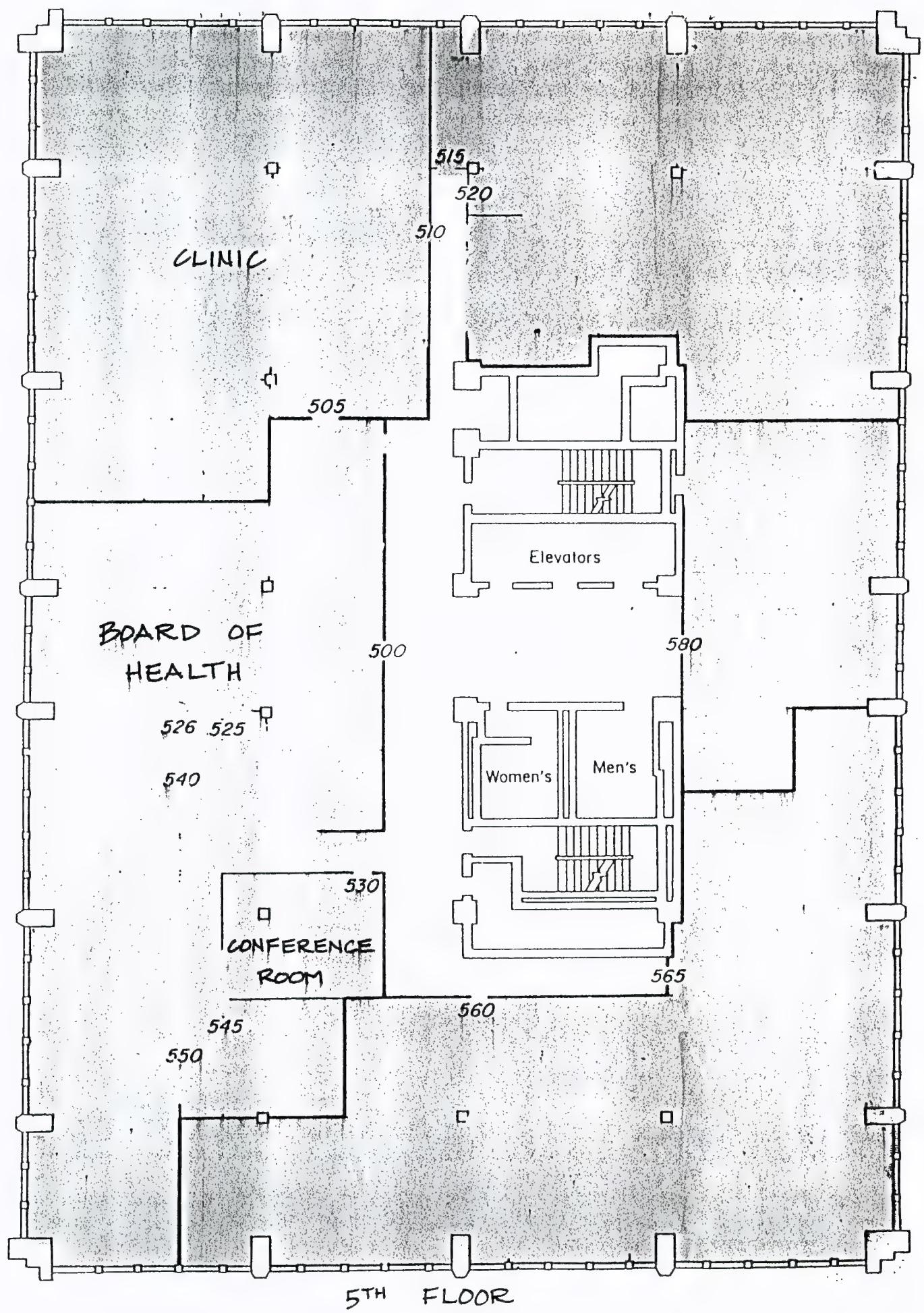
2ND FLOOR.

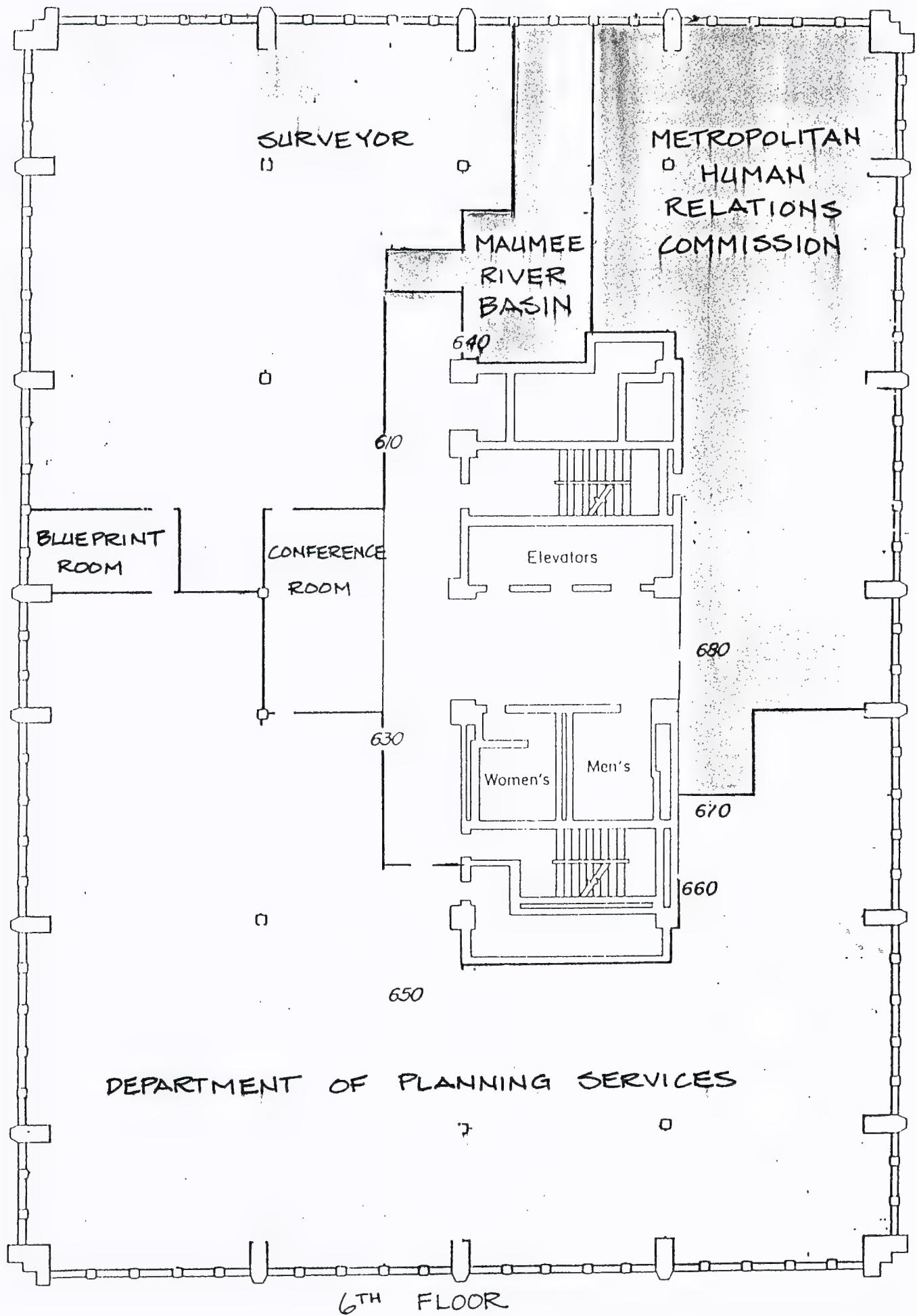


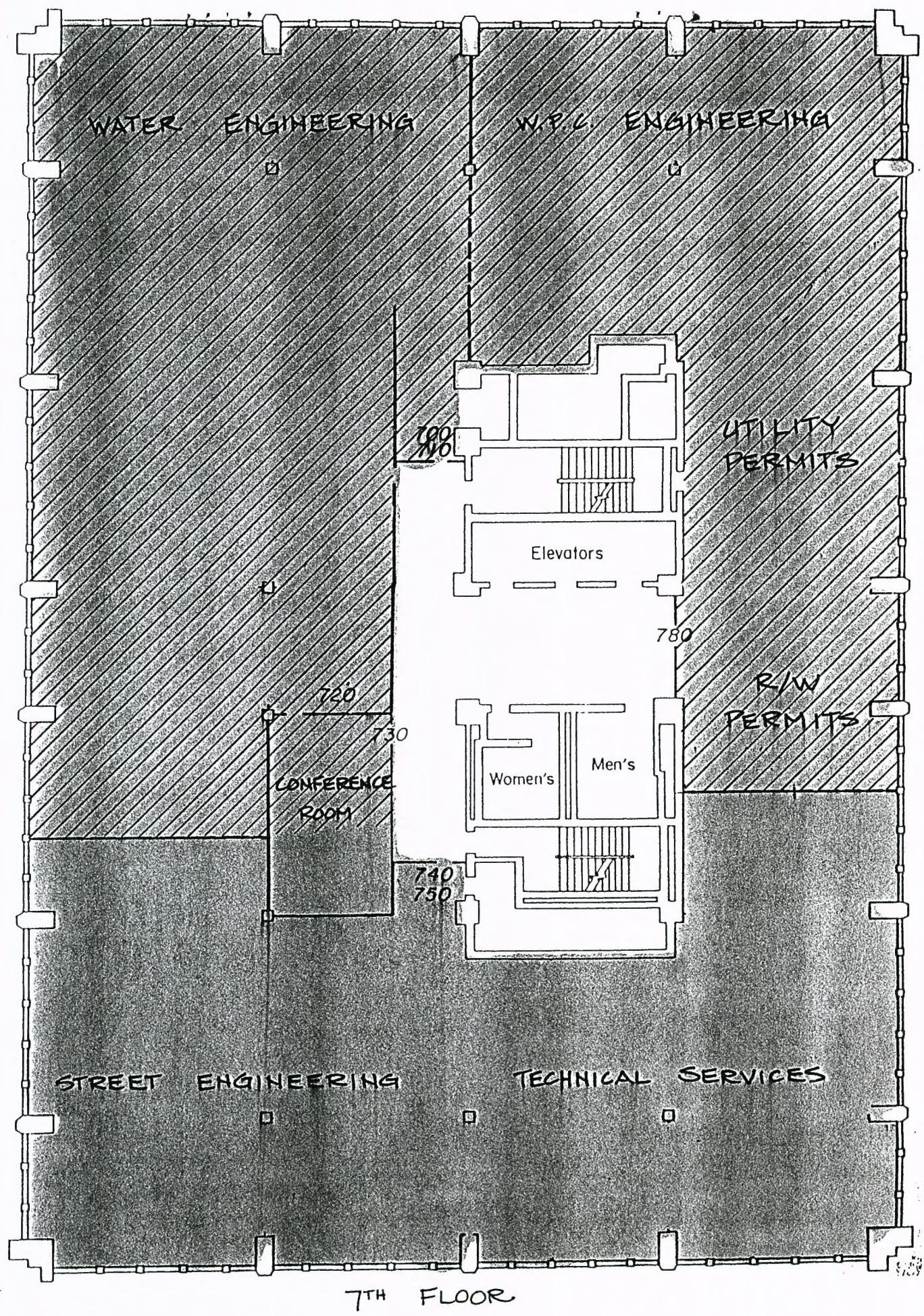
3RD FLOOR



4TH FLOOR







DIVISION OF
COMMUNITY & ECONOMIC
DEVELOPMENT

CONFERENCE
ROOM

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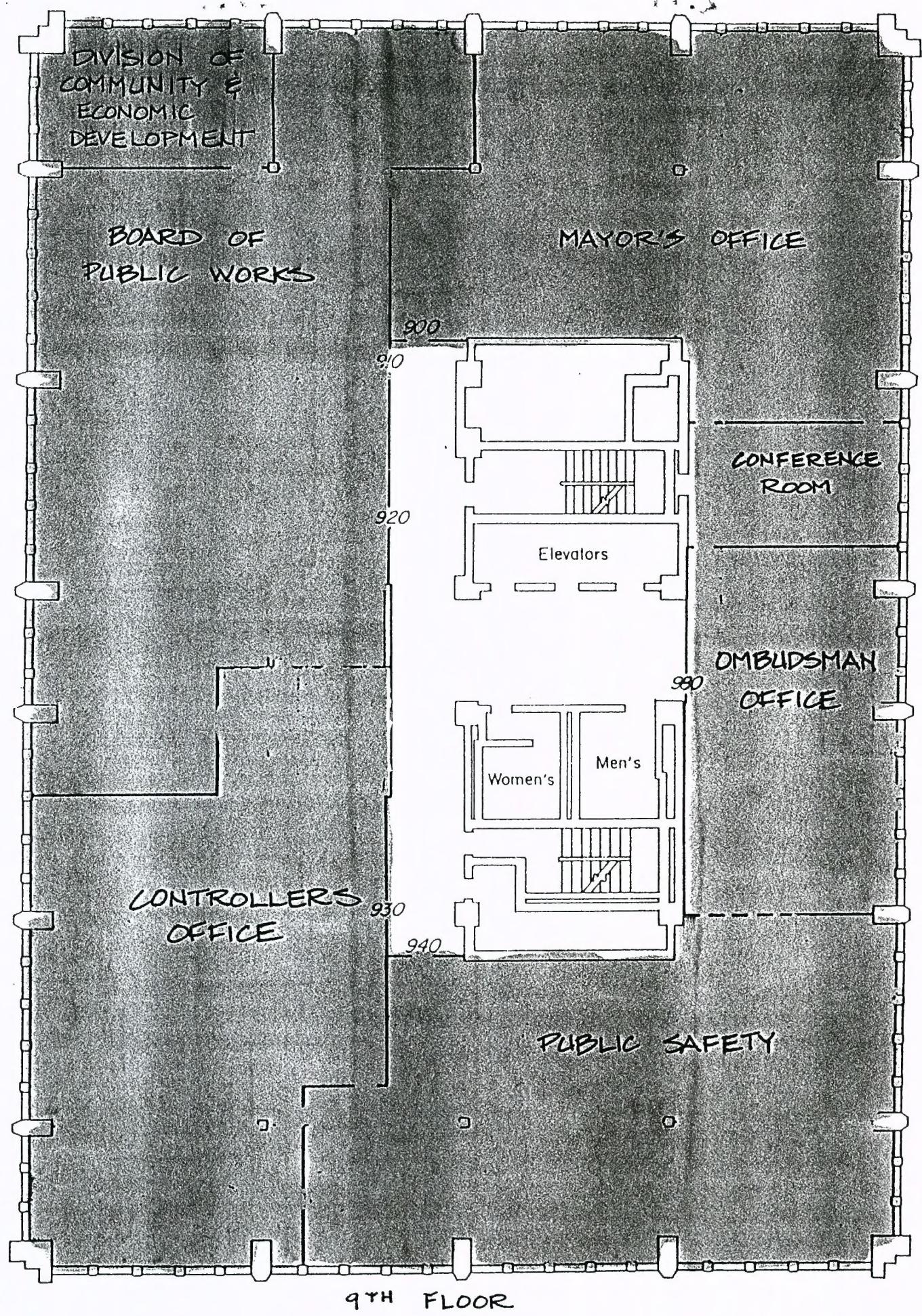
Elevators

Women's

Men's

880

8TH FLOOR



BILL NO. R-96-02-01

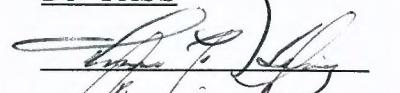
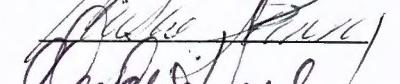
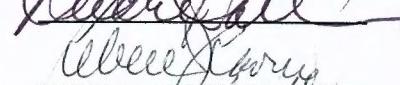
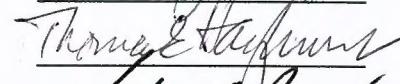
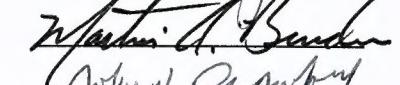
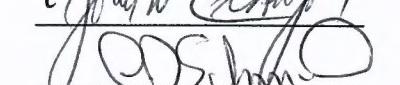
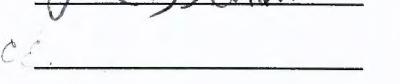
REPORT OF THE COMMITTEE ON
FINANCE
THOMAS C. HENRY - JOHN N. CRAWFORD - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORIXXANXE) (RESOLUTION) APPROVING THE EXECUTION
OF A LEASE AGREEMENT BETWEEN THE CITY OF FORT WAYNE AND ALLEN
COUNTY INDIANA TO FORMALIZE AGREEMENTS CONCERNING JOINT OCCUPANCY OF THE
CITY-COUNTY BUILDING

HAVE HAD SAID (ORIXXANXE) (RESOLUTION) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORIXXANXE) (RESOLUTION) _____

DO PASS DO NOT PASS ABSTAIN NO REC

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DATED: 2-27-96

Sandra E. Kennedy
City Clerk